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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Roosevelt Irrigation District,

10 Plaintiff,

11 v.

12 United States of America, *et al.*,

13 Defendants.

14 Salt River Project Agricultural  
Improvement and Power District, *et al.*,

15 Counter-Claimants/  
16 Cross-Claimants,

17 v.

18 Roosevelt Irrigation District,

19 Counter-Defendant.

20 and

21 United States of America; Department, *et al.*

22 Cross-Defendants.  
23

No. CV-15-00448-PHX-JJT

**ORDER**

24 At issue are Defendants and Counterclaimants Salt River Project Agricultural  
25 Improvement and Power District (“the District) and Salt River Valley Water Users’  
26 Association’s (“the Association”) (collectively “SRP”) Motion for Partial Summary  
27 Judgment (Doc. 312, SRP MSJ), to which Plaintiff and Counterdefendant Roosevelt  
28 Irrigation District (“RID”) filed a Response (Doc. 324, RID Resp.) and SRP filed a Reply

1 (Doc. 334, SRP Reply); and RID’s Motion for Partial Summary Judgment (Doc. 314, RID  
2 MSJ), to which SRP filed a Response (Doc. 323, SRP Resp.) and RID filed a Reply (Doc.  
3 332, RID Reply). In this Order, the Court will address Count VI of SRP’s counterclaim,  
4 which is the only issue that remains unresolved in the above Motions.

5 The Court resolved the bulk of each party’s Motion for Partial Summary Judgment  
6 in a September 24, 2018 Order (Doc. 349, Sept. 24 Order). The only count still pending is  
7 SRP’s Count VI, which claims that SRP’s “Articles of Incorporation prohibit RID from  
8 continuing to withdraw water from [SRP] member lands and transport that water outside  
9 the [Salt River Reservoir District (“SRRD”)].” (SRP MSJ at 16.) This argument relies on  
10 a 1965 amendment to the Articles of Incorporation which states that

11 Except for lawful exchanges, the waters of this Association, including the  
12 ground waters within the exterior boundaries of the [SRRD], shall never be  
13 sold, disposed of, distributed, or delivered for use on lands not now receiving  
or lawfully entitled to receive water from or through the works and facilities  
of the Salt River Project.

14 (SRP MSJ at 17 (citing Doc. 313 at 3).)

15 Under SRP’s line of reasoning, if RID is subject to SRP’s Articles of Incorporation,  
16 it is prohibited from continuing to use the pumping plants to pump water to areas outside  
17 of the SRRD. However, both parties acknowledge that RID is only subject to the Articles  
18 of Incorporation if it is an SRP shareholder. And both parties acknowledge that RID can  
19 be a shareholder only if it owns the pumping plants at issue. SRP continues to contest RID’s  
20 ownership but argues that “[i]f and to the extent that RID is correct that it holds an interest  
21 in the well sites located within the SRRD, RID is a[n] [SRP] for purposes of those well  
22 sites.” (SRP Mot. at 17.) Thus, Count VI is predicated—at least in part—on the question  
23 of whether RID owns the pumping plants.

24 This very question was at issue in the related -439 action, in which RID filed a  
25 complaint against the United States, seeking to quiet its title to the disputed pumping plants.  
26 *See Roosevelt Irrigation District v. United States*, 15-CV-00439-PHX-JJT. The Court  
27 deferred ruling on Count VI of SRP’s Counterclaim in the September 24 Order in the  
28 instant case because “the Court’s ruling on Count VI of the Counterclaim will be informed,

1 and potentially obviated, by its forthcoming ruling on the pending dispositive motions in  
2 the Quiet Title Action.” (Sept. 24 Order at 16.) Recently, the Court granted the United  
3 States’ Motion to Dismiss RID’s Complaint in the -439 action, finding RID’s claim time  
4 barred under the Quiet Title Act’s 12-year statute of limitations. 15-CV-00439-PHX-JJT  
5 (Doc. 256.)

6 As the Court explained in its recent Order, dismissing RID’s quiet title action does  
7 not adjudicate that dispute on the merits. Rather, all that the Court determined was

8 that RID cannot succeed in quieting its title against the competing interest of  
9 the United States. As explained in *Block*, [‘]dismissal pursuant to § 2409a(f)<sup>1</sup>  
10 does not quiet title to the property in the United States. The title dispute  
11 remains unresolved. Nothing prevents the claimant from continuing to assert  
12 his title, in hope of inducing the United States to file its own quiet title suit,  
13 in which the matter would finally be put to rest on the merits.[’]

14 (Sept. 24 Order (quoting *Block v. North Dakota*, 461 U.S. 273, 291–92 (1983)).)

15 Thus, the Court’s recent Order in the -439 matter did not assist the Court in  
16 advancing the instant action. SRP’s Count VI argues that if RID owns fee title in the  
17 pumping plants (which SRP disputes), then RID is an SRP shareholder. (SRP MSJ at 16;  
18 SRP Resp. at 17.) In support of this corollary, SRP cites the affidavit of an SRP employee  
19 who testified that “[t]he lands on which the wells operated by RID within the SRRD are  
20 located are [SRP] member lands and are subject to [SRP] stock subscriptions.” (Doc. 320-  
21 4 at 2.) SRP also supports its proposition with an excerpt from Article V of its own Articles  
22 of Incorporation, which states that

23 [t]hose and those only who are owners of lands, or occupants of lands . . .  
24 within the territory described in Article IV . . . shall be the holders or owners  
25 of shares of the capital stock of this Association. For each acre of such lands  
26 shareholders may become the owner of one share of stock of this Association  
27 and no more.

28 (Doc. 315 Ex. 1 at 6.)

But even if the Court accepts SRP’s premise—that if RID owns the pumping plants,  
then it is an SRP shareholder—SRP offers no evidence to prove that RID owns the pumping  
plants to begin with. Indeed, RID argues that SRP’s bare allegations of fact are not

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<sup>1</sup> As amended, § 2409a(g).

1 sufficient to establish that RID is an SRP shareholder. (RID Resp. at 15–16) (“[SRP’s]  
2 statements are pure legal conclusions that mirror the language from the Motion almost  
3 identically and cite only to . . . the affidavit from SRP’s employee again regurgitating the  
4 identical legal conclusions.”). While RID does not dispute that, under the meaning of  
5 SRP’s Articles of Incorporation, those who own property within the Salt River Project may  
6 be SRP shareholders, RID argues that—despite its alleged fee title to the pumping plants—  
7 it never became a shareholder. (RID MSJ at 13.) RID claims that it has “never been issued  
8 any shares,” that it “has never paid any shareholder assessments,” and such nonpayment  
9 “has never resulted in liens being placed on any of the Eastside wells.” (RID MSJ at 13.)  
10 Ultimately, RID contends that the Court cannot grant SRP summary judgment on the issue  
11 because “SRP has failed to provide any evidence in support of its claims that RID is a  
12 shareholder.” (RID MSJ at 13.)

13 RID is correct that, without evidence of RID’s shares or at least its ownership of the  
14 pumping plants, there remains a genuine dispute of material fact. As such, the Court cannot  
15 conclude as a matter of law that RID is an SRP shareholder.<sup>2</sup> Yet the Court hardly expects  
16 SRP to produce such evidence, if it exists, as it would likely simultaneously prove RID’s  
17 ownership interest, which SRP argues against.

18 Had the Court decided RID’s quiet title claim in the -439 matter on the merits, this  
19 question may have been easier to resolve. If RID succeeded in establishing quiet title to the  
20 pumping plants, then SRP’s Articles of Incorporation might have the persuasive force to  
21 help the Court determine that, as a landowner, RID must also be a shareholder. And  
22 conversely, if the United States succeeded in quieting title, SRP would not rely on this  
23 shareholder argument because RID’s interest in the pumping plants would be nullified. But  
24 because the Court dismissed the quiet title action without deciding it on the merits, the  
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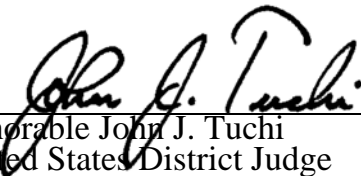
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27 <sup>2</sup> Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is  
28 appropriate when: (1) the movant shows that there is no genuine dispute as to any material  
fact; and (2) after viewing the evidence most favorably to the non-moving party, the  
movant is entitled to prevail as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*,  
477 U.S. 317, 322-23 (1986).

1 Court finds itself in the same place it did on September 24, 2018, when it declined to rule  
2 on SRP's Count VI.

3 As there is a genuine dispute of material fact surrounding the question of RID's  
4 status as owner of the pumping plants and as a shareholder, the Court will not grant  
5 summary judgment on this Count. It must proceed to trial, along with the other counts on  
6 which the Court denied summary judgment in its September 24 Order and the claims on  
7 which no party sought summary judgment. The Court will set a pretrial status conference  
8 by separate Order.

9 **IT IS THEREFORE ORDERED** denying SRP's Motion for Partial Summary  
10 Judgment (Doc. 312) as to Count VI.

11 Dated this 12th day of June, 2019.

12   
13 Honorable John J. Tuchi  
14 United States District Judge  
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